

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIO K. BENNETT,)	No. C 05-3502 JF (PR)
)	ORDER GRANTING
vs.)	PLAINTIFF'S MOTION TO
JEANNE WOODFORD, et al.,)	DISMISS; ORDER OF
)	DISMISSAL
Defendants.)	(Docket No. 93)

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Pelican Bay State Prison (“PBSP”) officials and the Director of the California Department of Corrections and Rehabilitation. Plaintiff has been granted leave to proceed in forma pauperis in a separate written order. The Court initially dismissed Plaintiff’s claims in the original complaint and the amended complaint with leave to amend. Plaintiff filed a second amended complaint on April 16, 2007. On March 20, 2008, the Court issued an order addressing Plaintiff’s pending motions and stated it would review the amended complaint in a separate written order. On April 16, 2008, Plaintiff filed a motion to dismiss stating that he would like to withdraw and dismiss all of his civil rights cases pending in this Court. See Pl.’s Mot. at 1.

DISCUSSION

2 Plaintiff moves the Court to withdraw and dismiss the instant civil rights action. A
3 plaintiff has the absolute right to dismiss his or her action by filing a notice of dismissal
4 “at any time before service by the adverse party of an answer or of a motion for summary
5 judgment.” Fed. R. Civ. P. 41(a)(1)(i). Said dismissal may be with or without prejudice,
6 but unless plaintiff’s notice of dismissal states otherwise, it is deemed to be “without
7 prejudice.” See Fed. R. Civ. P. 41(a)(1); Humphreys v. United States, 272 F.2d 411, 412
8 (9th Cir. 1959). No court order is required. Plaintiff’s notice of dismissal is effective by
9 itself to terminate the action: “[A]n action may be dismissed by the plaintiff without order
10 of the court . . . by filing a notice of dismissal.” Fed. R. Civ. P. 41(a)(1); see also
11 Hamilton v. Shearson-Lehman American Exp. Inc., 813 F.2d 1532, 1534-1536 (9th Cir.
12 1987) (Rule 41(a)(1)(i) does not require leave of court to dismiss the action).

13 Accordingly, the instant civil rights action is DISMISSED without prejudice. The
14 Clerk shall terminate any pending motions and close the file.

IT IS SO ORDERED.

DATED: 4/18/08


JEREMY FOGEL
United States District Judge